

UNITED STATES OF AMERICA
IN THE DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

**TYLER P. WISS
and MELODY M. MCKENNA,**

Case No: 22-CV-02047-PJS-LIB

Plaintiffs,

vs.

**PROCTOR INDEPENDENT SCHOOL DISTRICT 704,
DEREK B. PARENDO;
JOHN DOE ASSISTANT COACHES #1-5; and
JOHN E. ENGELKING.**

Defendants.

STATEMENT OF THE CASE

Plaintiffs, Tyler P. Wiss and Melody M. McKenna, by their attorneys, **Ledin, Olson & Cockerham, S.C.**, hereby submit their Statement of the Case, pursuant to the Court's Pretrial Scheduling Notice and Order dated November 15, 2022.

I. FACTS

Plaintiffs' minor child, T.W. was a student athlete at the defendant Proctor Independent School District 704 (hereinafter "Proctor") on or about September 6, 2021. On or about that date, T.W. was intentionally held down and assaulted with a toilet bowl plunger by several Proctor student athletes after a football practice. At the time of the incident there was no adult supervision of the student athletes. This assault occurred on Proctor's property. Plaintiffs further intend to show that the School District, administration, and coaches, had notice of prior hazing, and otherwise inappropriate, incidents. Named defendants failed to take appropriate measures to

prevent these types of actions from further happening. Because of these defendants' deliberate and intentional indifference to providing a school environment free of hazing, sexual assaults and discrimination, T.W. suffered the injuries complained of in their complaint.

II. FACTS THAT SUPPORT CLAIMED LIABILITIES

The facts which support plaintiffs' causes of action are as follows:

1. T.W. was a student at Proctor which received funding from the federal government. While on campus, a group of Proctor students held T.W. down and assaulted him with a plunger. This same plunger had been used for several years prior for various sexual harassment assaults, hazing incidents and otherwise inappropriate activities. This plunger and its inappropriate use for sexual harassment, assault and hazing was known by the defendants after previous complaints had been made to the defendants of its inappropriate use. The defendants named in this complaint were deliberately indifferent to the known acts of sexual harassment, assault and hazing which occurred by Proctor students and their use of the plunger on other students. As a direct and proximate result of defendants' deliberate indifference plaintiff was assaulted and damaged on September 6, 2021.

2. Statutes Applicable

A. 20 U.S.C. §1681(a) – Sexual Assault including student on student sexual assault is a form of sexual discrimination under the Act. See *Davis v. Monroe County Board of Education*, 526 U.S. 629, 650, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999).

B. 42 U.S.C. 1983 – T.W. had a right to be free of sexual harassment and assault while on publicly funded school property. The defendants' deliberate indifference to T.W.'s rights after actual knowledge of the inappropriate use of the plunger for sexual harassment, assault and hazing was the direct and proximate result of T.W.'s damages.

C. Minnesota Statutes §363a.13. Defendants had a duty to provide an educational atmosphere that was free of sexual discrimination. Defendants' deliberate indifference to this duty was the direct and proximate result of T.W.'s damages.

III. DAMAGES

TW suffered a temporary physical impairment of condition related the incident described above. TW is currently seeking mental health therapy and counseling. TW's emotional and mental conditions have been diagnosed by his treatment team as referenced in his medical treatment records. He has been treating with a Licensed Independent Social Worker and a Psychiatric Mental Health Nurse Practitioner. His status is still developing, and the extent of his damages are unknown at this time.

To date, TW has suffered temporary physical pain, suffering and disability; ongoing mental and emotional distress (which is expected to be permanent); and medical expenses for treatment.

Dated this 30th day of November, 2022.

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